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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

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DATE: NOV 08 2011 Office: VERMONT SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will withdraw the director's decision and remand the matter to the service center for further action and entry of a new decision.

The petitioner filed the petition seeking to classify the beneficiary as an L-1A nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L). The petitioner is an international transportation company incorporated in the State of New York. It claims to be a subsidiary of Scan-Shipping A/S, located in Copenhagen, Denmark. The beneficiary was initially admitted to the United States in L-1B classification in June 1998, and was subsequently granted an extension of his L-1B status until April 2003. On June 27, 2002, the petitioner filed a nonimmigrant petition ([redacted] to request that the beneficiary be granted a change of status from L-1B to L-1A based on his appointment to the position of [redacted]. The petitioner also requested that the beneficiary's L-1 status be extended through July 15, 2004. That petition remained pending at the time the instant petition was filed on November 7, 2005.[1] The petitioner now requests that the beneficiary be granted an extension of L-1A status from July 15, 2004 through July 1, 2006, so that he may serve in the position of [redacted] – Northeast.

On January 27, 2006, the director issued a notice of intent to deny the petitioner's request for an extension of the beneficiary's L-1 nonimmigrant status. The director advised the petitioner that United States Citizenship and Immigration Services (USCIS) records indicate that the beneficiary is inadmissible to the United States under section 212(a)(6)(C) of the Act. Citing to the regulation at 8 C.F.R. § 214.1(a)(3), the director advised the petitioner that the record did not contain evidence that the beneficiary's inadmissibility has been waived. The director advised the petitioner that it must submit evidence that the beneficiary is eligible for an extension of his stay by providing a copy of a currently valid waiver of inadmissibility, or, in the alternative, by withdrawing its request for an extension of the beneficiary's status and requesting that USCIS notify an American Embassy or Consulate, where the beneficiary may apply for a visa and waiver of inadmissibility.

The record reflects that the petitioner did not respond to the notice of intent to deny. The director denied the petition on October 2, 2006, concluding that the grounds for denial had not been overcome.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO. On appeal, counsel for the petitioner asserts that the petitioner submitted sufficient initial evidence to establish that the beneficiary is eligible for the requested L-1A classification. Counsel contends that the director erroneously denied the petition based on a finding that the beneficiary is inadmissible under section 212(a)(6)(C) of the Act, and contends that the beneficiary has not, by fraud or willfully misrepresenting a material fact, sought to procure a visa or admission into the United States.

1. The Law

To establish eligibility for the L-1 nonimmigrant visa classification, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act. Specifically, a qualifying organization must have employed the

[1] The prior petition ([redacted]) was denied by the director, Vermont Service Center, on October 2, 2006. On October 3, 2011, the AAO withdrew the director's decision and remanded the matter to the director for further action and entry of a new decision.

beneficiary in a qualifying managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year within the three years preceding the beneficiary's application for admission into the United States. In addition, the beneficiary must seek to enter the U.S. temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate in a managerial, executive or specialized knowledge capacity.

The regulation at 8 C.F.R. § 214.2(l)(3) states that an individual petition filed on Form I-129 shall be accompanied by:

> (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.
>
> (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.
>
> (iii) Evidence that the alien has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition.
>
> (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training and employment qualifies him/her to perform the intended services in the United States; however the work in the United States need not be the same work which the alien performed abroad.

The regulation at 8 C.F.R. § 214.2(l)(15)(i) states the following, in pertinent part, with respect to requests for extensions of stay:

> In individual petitions, the petitioner must apply for the petition extension and the alien's extension of stay concurrently on Form I-129. . . . Even though the requests to extend the visa petition and the alien's stay are combined on the petition, the director shall make a separate determination on each.

The regulation at 8 C.F.R. § 214.1(a)(3)(1) provides that every nonimmigrant alien who applies for admission to, or an extension of stay in, the United States, must establish that he or she is admissible to the United States, or that any ground of inadmissibility has been waived under section 212(d)(3) of the Act. There is no appeal from the denial of an application for extension of stay filed on Form I-129. 8 C.F.R. § 214.1(c)(5).

II. Discussion

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on November 7, 2005. At the time of filing, the beneficiary was physically present in the United States pursuant to an approved L-1B petition granting him employment authorization with the petitioning company through April 2, 2003. The beneficiary's initial admission to the United States in L-1B status was on June 25, 1998. On June 27, 2002, when the beneficiary was promoted to the position of Airfreight Branch Manager, the petitioner filed a

petition to request an amendment of his status from L-1B to L-1A, and an extension of his status through July 15, 2004. That petition ([redacted]) remained pending at the time the instant petition was filed on November 7, 2005. The petitioner indicated that the beneficiary's current position was Airfreight Regional Manager – Northeast, and requested that he be granted an extension of status for two years commencing on July 15, 2004.[2]

As noted above, even though the requests to extend the visa petition and the alien's stay are combined on the Form I-129 petition, the regulations mandate that the director make a separate determination with respect to each request. 8 C.F.R. § 214.2(l)(15)(i).

On October 2, 2006, the director issued a Notice of Intent to Deny the request for an extension of the beneficiary's status because USCIS records indicate that he is inadmissible to the United States and the petitioner did not provide a valid waiver of inadmissibility, pursuant to 8 C.F.R. § 214.1(a)(3). The director instructed the petitioner to either submit a copy of the beneficiary's valid waiver of inadmissibility or to withdraw its request for an extension of the beneficiary's change of status and request that USCIS notify an American consulate abroad where the beneficiary may apply for a visa and a waiver of inadmissibility. The director mentioned no grounds for denial of the underlying L-1A visa petition.

When the petitioner failed to respond to the Notice of Intent to Deny, the director denied the petition, rather than the request for an extension of the beneficiary's status, because the petitioner failed to submit evidence to overcome the grounds for denial.

Upon review, the director's decision dated October 2, 2006 will be withdrawn, and the petition will be remanded to the director. The director is instructed to review the record of proceeding and to issue two separate determinations, one addressing the beneficiary's eligibility for L-1A classification under the applicable regulations, and one decision addressing the beneficiary's eligibility for an extension of his nonimmigrant classification.

The director's finding that the beneficiary is inadmissible does provides a valid basis for the denial of the extension of status request pursuant to 8 C.F.R. § 214.1(1)(3). The denial of a request for an extension of stay filed on Form I-129 cannot be appealed.

However, the beneficiary's presumptive inadmissibility and failure to obtain a waiver do not provide a valid basis for the denial of the underlying L-1A petition. Based on a review of the language used in the notice of intent to deny the petition and the final notice of decision, the director notified the petitioner of her intent to deny the request for an extension of status, but ultimately denied the underlying petition and made no final determination with respect to the beneficiary's eligibility for the requested extension of status.

At this time, the AAO takes no position on whether the petition is approvable. The director must make the initial determination on this issue. So far, the director has not done so. As noted above, the beneficiary's inadmissibility does not provide a valid basis for the denial of the underlying petition. Therefore, the AAO

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[2] As noted by the director in the Notice of Intent to Deny, the record does not establish that the beneficiary would be eligible for an extension of status beyond July 21, 2005, pursuant to the limitations on stay imposed by 8 C.F.R. § 214.2(l)(15)(ii).

will remand this matter to the director for a new decision. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing discussion and entry of a new decision which, if adverse to the petitioner, shall be certified to the Administrative Appeals Office for review.